IN THE

Supreme Court of the United States

OCTOBER TERM 1970

No. ~~1-8281~~ 70-283

FREDERICK E. ADAMS, Warden,
Connecticut State Prison,

Petitioner,

vs.

ROBERT WILLIAMS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

DONALD A. BROWNE,
Assistant State's Attorney
for Fairfield County,
Attorney for Petitioner,
County Court House,
Bridgeport, Connecticut 06604.

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Petitioner, Frederick E. Adams, Warden of the Connecticut State Prison, respectfully prays that a writ of certiorari issued to the United States Court of Appeals for the Second Circuit, to review the decision and judgment of that Court entered on April 14, 1971, after rehearing in banc reversing the order of the District Court for the District of Connecticut dismissing a petition for a writ of habeas corpus.

Opinions Below

The opinion of the Court of Appeals for the Second Circuit entered on April 14, 1971 after rehearing in banc is not yet reported but is appended as Appendix A. This opinion overruled the earlier opinion of the Court of Appeals of the Second Circuit entered on December 16, 1970 which is reported at 436 F. 2d 30. The initial opinion af-

firmed a judgment of the United States District Court for the District of Connecticut denying relief to the respondent which is not reported and a copy of which is appended as Appendix C. The opinion of the Connecticut Supreme Court, sustaining the original conviction of Robert Williams is reported at 157 Conn. 114, 249 A. 2d 245.

Statement of Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was entered on March 14, 1971. The statutory provision believed to confer on this Court jurisdiction to review that judgment by writ of certiorari is 28 U.S.C. § 1254(1).

Question Presented

The respondent's application for writ of habeas corpus presented essentially one limited question for determination and that was exclusively whether items seized from the person and automobile of the respondent on the date of October 30, 1966 were obtained as the result of an unconstitutional search or seizure. The case evolves from an undisputed factual situation as found by the Connecticut Superior Court and the District Court for the District of Connecticut. The constitutional significance of the search and/or seizure necessarily requires a careful examination of these facts.

Succinctly stated the question presented by the factual situation is as follows:

> May a single police officer acting upon specific information received at 2:00 A.M. from a known person to the effect that a particular automobile contains a person with a gun in his waistband and with narcotics approach that automobile to investigate that information and finding such a person in the vehicle and con-

cerned for his safety and protection may he thereupon remove the weapon from the occupant's waistband without first seeing it and without making any other search of the person?

Constitutional Amendments Involved

The Respondent has sought and now attained relief by the Fourth Amendment right against unreasonable searches and seizures, made applicable to the States by the Fourteenth Amendment.

Statement

The respondent, Robert Williams, was arrested by a Bridgeport Police Officer by the name of Sergeant John Connolly on Hamilton Street in Bridgeport at about 2:20 a.m. on October 30, 1966. On that date Sergeant Connolly was on duty alone in an area of the city which consisted of a neigborhood with a high incidence of crime of various kinds. At approximately 2:15 a.m. on that date, in a gasoline station on the corner of East Main Street and Hamilton Street, Sergeant Connolly met and had a conversation with a person who was known to him. Sergeant Connolly considered this person to be reliable and trustworthy and had received information which he considered credible from the same person on a prior occasion although it did not result in an arrest.

At that specific time and location the same individual pointed out a specific automobile parked on Hamilton Street to the Sergeant and advised him that there was an occupant in the automobile who had both a pistol in his waistband and also narcotics. After receiving this information Sergeant Connolly determined to investigate and accordingly walked out of the gas station and across Hamilton Street in the direction of the specific auto. Upon ar-

rival at the auto Sergeant Connolly determined that there was in fact an occupant (the respondent) and requested the respondent to open the door. At that time Sergeant Connolly was still alone and it is undisputed that he was concerned about his personal safety and protection.

The respondent proceeded to roll down the passenger door window and Sergeant Connolly immediately placed his hand in through the open window and directly onto a pistol which was lodged in the respondent's waistband. Sergeant Connolly immediately seized and removed the pistol which was fully loaded. Before seizing the pistol the Sergeant did not tell the respondent that he was under arrest, and had made no search of the respondent. In seizing the pistol, Sergeant Connolly acted because he wanted to remove the weapon before the respondent had an opportunity to use it on himself (the officer).

After removing the respondent's pistol, Sergeant Connolly placed him under arrest for possession of the weapon and conducted a further search of his person which disclosed six cellophane packets of a white substance (heroin) in an Alka-Seltzer jar in the respondent's coat pocket and an additional 21 packets containing the same substance in the respondent's wallet. A further search of the respondent's auto at the scene disclosed a machete hidden under the front seat and later at police headquarters a set of narcotic "works" was found on top of the respondent's head under his hat.

The respondent was charged with the crimes of Violation of the Uniform State Narcotics Drug Act, Section 19-246, Connecticut General Statutes, involving the control of heroin; Carrying a Pistol Without a Permit in violation of Section 29-35, Connecticut General Statutes; and having Weapons in a Motor Vehicle in violation of Section 29-38, Connecticut General Statutes.

The respondent filed timely Motions to Suppress in both the Connecticut Circuit Court and Superior Court alleging

unconstitutional searches and seizures and following denials of these Motions the respondent was convicted of all three charges following a Court trial in the Superior Court on April 11, 1967. The respondent's convictions were affirmed by the Connecticut Supreme Court at 157 Conn. 114, 249 A.2d 245 and certiorari was denied by the United States Supreme Court at 395 U. S. 927, 23 L. Ed. 2d 244, 89 S. Ct. 1783.

On August 14, 1969 the respondent filed the instant petition for a writ of habeas corpus and after a hearing held on November 14, 1969 the District Court denied the petition on January 6, 1970.

Thereafter the respondent's appeal to the Second Circuit Court of Appeals was heard on September 29, 1970 and the decision of the District Court was affirmed on December 16, 1970 by a divided Court. The respondent's request for a re-hearing was granted by the Court, which subsequently reversed the District Court by an in banc decision on April 14, 1971.

Reasons for granting the writ.

The thrust of the respondent's claim of an unconstitutional intrusion upon his person as presented within his initial Petition and as apparently adopted by the Second Circuit Court of Appeals focuses on the propriety of Officer Connolly in leaving the gas station and walking up and across Hamilton Street to investigate his information or "to insist on an encounter, to make a forcible stop." Dissenting Opinion, page 35.

It appears undisputed that once Connolly located himself alongside the auto and the window was lowered he was constitutionally justified in reaching into the waistband and removing the weapon without attempting an external "pat" which was impracticable under the circumstances.

In the gasoline station the officer spoke and received his information from a person who was known to him by name, who was considered by the officer to be a reliable and trustworthy person and who then and there contributed specific information relating to an occupant of a specific automobile having specific items of contraband at a specific location (as to the gun). At that time and place the officer was required to make his immediate decision whether or not he should walk ouf of the gasoline station and across the public street to investigate and determine whether this information as presented was deserving of police inquiry.

The language of the United States Supreme Court in the case of *Terry* v. *Ohio*, 392 U. S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868, would appear to be highly significant to the instant question:

It appears clear and undisputed that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." *Terry* v. *Ohio*, ante, at page 22.

"It was this legitimate *investigative* function Officer McFadden was discharging when he decided to approach petitioner and his companions." (emphasis added). *Terry* v. *Ohio*, ante at page 22. See also *Young* v. *United States*, 435 F. 2d 405; *Carpenter* v. *Sigler*, 419 F. 2d 169.

The petitioner respectfully submits that the information received by Officer Connolly, specific in nature and corroborated by his personal observation sufficiently justified his decision to investigate even to the extent of a "stop" if his conduct actually constituted one.

The petitioner further submits that specific information from a known source should be just as persuasive as unusual activity in igniting police inquiry. See *United States* v. *Unverzagt*, 424 F. 2d 396 in which the Court ex-

pressly sustained a seizure or stop which was the result of information received by postal inspectors that a party was armed. See also *Ballou* v. *Massachusetts*, 403 F. 2d 982, cert. denied 394 U. S. 909, 89 S. Ct. 1024, 22 L. Ed. 2d 222, where the Court uses the following language:

"The course of action decided upon here—to follow up the (anonymous) tip and investigate—was properly responsive to all the information the officers possessed and the governmental interests of crime prevention and detection. Failure to have investigated would, to use the Court's words in Terry, supra, at 23, 88 S. Ct. at 1881, 'have been poor police work indeed.' "

Acknowledgement that the basis or origin of the officer's investigation may be information which he receives in the line of duty may also be found in the case of *Sibron* v. *New York*, 392 U. S. 40 at 62 and 63 where the Chief Justice makes express mention that Officer Martin had received no information concerning Sibron, and certainly indicates that information received might well be considered among the particular facts from which the officer infers that the individual in question is armed and dangerous.

"This demand for specificity in the *information* upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Terry* v. *Ohio*, ante, at page 21, note 18 and cases collected therein. (emphasis added)

The petitioner does not disagree with the observation in the dissenting opinion of Judge Friendly at page 37 that the Supreme Court in *Terry* was adopting a test balancing the amount of cause required to be shown against the extent of the particular invasion of personal security. The petitioner does disagree with any position that the same amount of probable cause must be shown for a protective search as would be necessary for an arrest and a search incidental thereto.

"There must be a narrowly drawn authority to permit a reasonable search for weapons for the protection of the police officer where he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime. The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent person in the circumstances would be warranted in the belief that his safety or that of others was in danger," *Terry* v. *Ohio*, ante, at page 27.

"The Supreme Court has made it clear that a law enforcement officer, when he justifiably believes that the individual he is investigating at close range is armed, has the power for his own protection to take necessary measures to determine whether that person is in fact carrying a weapon." *U. S.* v. *Thompson*, 420 F. 2d 536, 540 (1970); *Terry* v. *Ohio*, ante, at 24.

The intrusion caused by the seizure of the pistol by Officer Connolly from the respondent's waistband was clearly limited strictly to what was minimally necessary to determine whether the respondent had the weapon and to disarm him once he discovered it. Clearly the officer was not conducting an exploratory search for whatever evidence of criminal activity he might find.

The action of Officer Connolly was clearly not "the product of a volatile or inventive imagination, or undertaken simply as an act of harassment; the record evidences the tempered act of a policeman who in the course of an investigation had to make a quick decision as to how to protect himself and others from possible danger, and took limited steps to do so." cf, *Terry* v. *Ohio*, ante, at 28.

The seizure of the respondent's pistol was strictly circumscribed to the exigencies which justified its initiation. cf, *Terry* v. *Ohio*, ante, at 26. Officer Connolly "* * * confined his search strictly to what was minimally necessary

to learn whether (the man) was armed and to disarm (him) once he discovered the (weapon)." *Terry* v. *Ohio*, ante, at 30.

The petitioner respectfully submits that within the Terry decision the Supreme Court has determined that each individual factual situation must "be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Terry* v. *Ohio*, ante, at 21, 22.

It is the position of the petitioner that Officer Connolly did conduct himself appropriately and reasonably from the moment of his initial contact with the reporting witness and that his conduct lies clearly within the language of the Terry decision.

It appears undisputed that if the officer was legally justified in seizing the respondent's loaded pistol, the ensuing arrest and search of respondent's person and automobile and the subsequent seizure of the heroin and the machete were legally justified as incident to his arrest. *Preston* v. *U. S.*, 376 U. S. 364, 367, 84 S. Ct. 881, 11 L. Ed. 2d 777.

Conclusion

It is respectfully submitted that the decision of the Circuit Court of Appeals for the Second Circuit in the instant matter is in conflict with the decision of this Court in the case of *Terry* v. *Ohio* and is in conflict with the decisions of other Circuit Courts of Appeal applying the Terry decision and for that reason and the reasons previously set forth above, it is respectfully submitted that the petition for writ of certiorari should be granted.

Respectfully submitted,

DONALD A. BROWNE,
Assistant State's Attorney
for Fairfield County,
Attorney for Petitioner.